IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1395 OF 2007

Arjun Pandurang Kamble ..Petitioner

Vs.

The State of Maharashtra ..Respondent

Mr. U.N. Tripathi for petitioner.
Mr. A.S. Shitole, APP for State.

CORAM: B.H. MARLAPALLE,J.

Reserved on : August 23, 2007.

Pronounced on : August 28, 2007.

ORAL ORDER:

1. Heard Mr. Tripathi the learned counsel for the petitioner and Mr. Shitole, the learned APP for the State. Rule.

2. The petitioner is aggrieved by the order of externment dated 29/4/2006 by which he has been externed under Section 56 of the Bombay Police Act, 1951 (for short the Act) for a period of two years. the order has been served on the petitioner on 29/4/2006 and, therefore, about 16 months of period

out of the total period of two years has already expired and, therefore, as noted in the order dated 2/8/2007 the petition is being decided at the admission stage itself. Hence, Rule is made returnable forthwith.

3. The learned APP has filed affidavit-in-reply opposing the petition and also placed the original record before the court. Though several grounds have been set out in the petition memo impugning the order of externment, the learned counsel for the petitioner has confined his arguments only to grounds (d) and (e) which read as under:-

> (d) The allegations made in the impugned Show Cause Notice dated 16/8/2005, issued to the petitioner, specifically alleges that the petitioner is involved in commission of various anti-social activities in and around the limits of Santacruz (East), Mumbai. However, the impugned Show Cause Notice as well as the order of externment seeks to extern the petitioner from the limits of

Mumbai, Navi Mumbai, Thane and Raigad Districts. Raigad is an excessive area. The order of externment directing the petitioner to remove from all these 4 districts is excessive. There is no nexus of the areas of externment with the purpose of externment. This shows total non-application of mind. The order of externment is illegal and bad in law, ought to be quashed and set aside on this ground alone.

(e) The impugned Show Cause Notice as well as the order of externment directing the externment of the petitioner from Mumbai, Navi Mumbai, Thane and Raigad Districts is an illegal order since the externing authority has exercised powers in excess, by externing the petitioner from Raigad District. All the alleged prejudicial activities are confined to Santacruz Police Station only. Hence, the excessive order passed by the externing authority deserves to be quashed and set aside.

4. In short, it is contended that when the alleged unlawful activities of the externee were reported to have taken place within the limits of Greater Mumbai Municipal Corporation, there was no justification to extern the petitioner from the territorial limits of New Mumbai, Thane and Raigad Districts and in support of these contentions the learned counsel for the petitioner has placed reliance on the decisions of this court in the case of Shri Silva @ Gora Silva Ayanar Arjun vs. Shri Nawal Bajaj, Deputy Commissioner of Police and anr. [2007 ALL MR (Cri) 84] as well as Ganpat @ Ganesh Tanaji Katare vs. Assistant Commissioner of Police and ors. [2006 (1) Bom. C.R. (Cri.) 44]. The learned APP has raised a preliminary issue of maintainability of this petition on the ground that when the impugned order of externment could have been challenged by filing an appeal under Section 60 of the Act before the State Government, the petitioner cannot be permitted to invoke the writ jurisdiction of this court under Article 226 and 227 of the Constitution unless the statutory remedy of appeal was exhausted. He has also taken the issue of delays and latches on the part of

the petitioner in approaching this court belatedly. Per contra, Mr. Tripathi relied upon a Division Bench decision of the Gujarat High Court in the case of Jawahar Panalal vs. Sub Divisional Magistrate and anr. [1963 (1) Cri. L.J. 263] as well as the decision of this court (DB) in the case of Umar Mohamed Malbari vs. K.P. Gaikwad, Dy. Commissioner of Police and anr. [1988 Mh.L.J. 1034]. It was submitted by Mr. Tripathi that the plea for alternative remedy of appeal having not been exhausted does not come in the way of the petitioner as the petitioner's fundamental right to move freely throughout the territory of India which is guaranteed under Article 19 (1)(d) of the Constitution has been infringed. Mr. Tripathi placed reliance on the following observations of this court in Umar Malbari's case (Supra):-

> ".....In our judgment, there is no merit in this contention inasmuch as the Rule about the failure to exercise an alternative remedy when one is in existence is a Rule relating to the discretion of the Court and that Rule does not act as a bar to the jurisdiction of the Court

to entertain and grant petition. Therefore, the fact that the petitioner has not exhausted all his remedies does not bar the jurisdiction of the Court to entertain and dispose of the petition but, is a factor to be taken into account in favour of the petitioner. The rule that the High Court will not issue a prerogative writ when an alternative remedy is available does not apply when a petitioner comes to the Court with an allegation that his fundamental rights have been infringed. When an order of externemnt is passed against the petitioner, he can undoubtedly come to this Court with a writ petition on the ground that his fundamental right of freedom of movement is affected and this he can do without exhausting the other remedy provided for in the Act viz. an appeal to the State Government against the order. In view of the fact that the petitioner has been externed out of the areas covering three Districts as also Greater Bombay, it will have to be held that his fundamental right to move freely throughout the territory of India which is

guaranteed under Article 19(1)(d) of the Constitution has been infringed. In this view of the matter, the very fact that the petitioner has not exhausted his alternative remedy of an appeal or merely because he has come here after undue delay can be no hurdles in the matter of entertaining this petition."

5. As per Section 60(1) of the Act any person aggrieved by an order made under Section 56 therein may appeal to the State Government or to such officer as the Government may by order specify within 30 days from the date of such order. Further, as per Subsection (4) of Section 60 in calculating the period of thirty days provided for an appeal under this section, the time taken for granting a certified copy of the order appealed against, shall be excluded. There does not appear to be a provision in Section 60 to entertain an appeal beyond a period of 30 days. This petition has been filed on 24/7/2007 i.e. almost after 15 months of the impugned order of externment and surely the remedy of appeal for him would be doubtful. Having regards to the observations made by

the Division Bench of this Court in Malbari's case, it would be expedient that the petition is decided on merits.

6. It is clear from the record that the petitioner was issued a show cause notice on 16/8/2005, he was heard and was reported to have examined witnesses before the competent authority i.e. the Deputy Commissioner of Police, Zone No.8, Mumbai before the externment order was passed. In the show cause notice as well as in the externment order reference has been made to C.R. No.150/05 registered against the petitioner along with three others on 13/3/2005 with Vakola Police Station, Mumbai for the offences punishable under Sections 324, 506(II) read with Section 34 of IPC. In addition, the reference has also been made to in-camera statements of 4 different witnesses recorded on 12/4/2005 and 13/4/2005. It was contended by Mr. Tripathi that the alleged offences reported in C.R. No. 150/05 or in the in-camera statements of four witnesses have all taken place purportedly within the jurisdiction of Vakola Police Station or at the most within the Mumbai

Suburban area. The impugned order dose not justify the externment of the petitioner from the areas of New Mumbai, Thane and Raigad Districts and, therefore, he submitted that the impugned order suffers from the vice of excessiveness. In this regard he relied upon the decision in the case of Pandharinath Shridhar Rangnekar vs. Dy. Commissioner of Police, State of Maharashtra [AIR 1973 SC 630].

7. I have gone through the affidavit-in-reply filed on behalf of the State as well as in-camera statements of all the four witensses. These statements have been recorded by the Police Sub Inspector, Vakola Police Station and they have been duly verified by the Assistant Commissioner of Police on the next day. In the verification, all the four witnesses have affirmed the contents of the in-camera statements as recorded as per the information given by them and they stated that the said statements were correctly recorded. These statements do make out a case that witnesses were scared to come in the open and state against the petitioner regarding his criminal activities of extortions, assault with

weapons and threats of physical violence.

8. Now coming to the points raised by Mr.Tripathi about the vice of excessiveness challenging the externment order, it needs to be noted that the Supreme Court in the case of Pandharinath Rangnekar (Supra) referred to the following consistent opinion expressed by this court right from 1968 to 1973 onwards:-

> (a) The suburban areas of Mumbai City are very intimately connected with the surrounding area of Thana District and it is a common knowledge that Thana town in the surrounding area is also an area where large industries have grown contiguous with the industrial area of Greater Bombay and that the entire industrial area is connected together by several means of communication including suburban trains.
>
> (b) It may be that the area of operation may be in a particular locality but if the externment is limited to that area then it

might be impossible to prevent the externee from visiting that area every day. Any part in Bombay is easily connected by transport with any other part of Greater Bombay and also the Thana District, and if an externee is externed outside the limits of Greater Bombay, then he should not take more than 15 minutes to reach Kurla from a place like Thana if the latter is excluded from externment. The very object of externment is to make it as difficult as possible to the externee to return to the field of his activities.

(c) The contiguous area of Thana District is intimately connected with the industrial area of Greater Bombay with cheaper and quicker means of transport and communication and by reason of the means of communication and proximity, the districts of Greater Bombay and Thana are for all practical purposes one local area or one district.

9. During the last about 40 years a new township

has come on the eastern side of Mumbai and has expanded its territories on south eastern side which is called the New Mumbai area. It starts from Vashi and virtually touches Panvel town. Local trains on the harbour line are also plying upto Panvel. New Mumbai area is now a Municipal Corporation and has a separate Police Commissionrate. New Mumbai area is part of Thane District and in fact, therefore, it is not necessary for the externing authority to separately state New Mumbai Area when the externemnt order covers the Greater Mumbai and Thane Districts. There is no doubt that Panvel is part of Raigad District. With the massive development in the New Mumbai area the commerce, trade and industrial activities, including the I.T. industries as well as residential buildings are actually an extension of the Greater Mumbai area. It would not be exaggeration to say that Mumabi and New Mumbai are twin-cities as of now. Therefore, what was said in respect of the Greater Mumbai District and Thane District being one local area or one District in the consistent view recorded by this court and noted by the Apex Court in the case of Pandharinath Rangnekar, is squarely applicable to the New Mumbai area right upto Panvel

town. Consequently when an externee from Mumbai is being externed under Section 56 of the Act to prevent him from visiting the other areas every day, it would be necessary that he is externed from three districts, namely, Greater Mumbai (Mumbai Urban and Mumbai Suburban), Thane and Raigad Districts. Under these circumstances, no fault could be found with the impugned order which has externed the petitioner from the Districts of Greater Mumbai, Thane and Raigad and Thane District includes the New Mumbai area, as well.

10. Having regards to the seriousness of the effect of an externment order, it would be desirable for the competent authority to state right at the first instance in such externment order itself regarding the appellate remedy being available and to be availed within 30 days under Section 60 of the Act so that the externee concerned is made aware that he has such a statutory remedy to challenge the order of externment within a specific period on all grounds, including the ground of infringement of fundamental rights. When the availability of such an appellate remedy is set out in the order of externment, the

State Government could more forcefully oppose the maintainability of the petition without availing such a statutory remedy of appeal.

11. In the premises, the challenge to the externment order dated 29/4/2006 is devoid of merits and hence the petition fails. The same is hereby dismissed. Rule is discharged.

(B.H. Marlapalle,J.)